

REMARKS

Claims 6-28 are pending in this application. Claim 12 is amended. Re-examination and reconsideration of the application, as amended, are requested.

Claims 6-9, 12-16, 18, 19 and 22-28 are rejected under 35 U.S.C. §102(e) as being anticipated by Causey, III et al. (USP 6,641,533). Claims 12-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Saltzstein et al. (USP 5,931,791). Claims 6-10 and 12-28 are rejected under 35 U.S.C. §103(a) as being unpatentable over Tune et al. (USP 5,630,710) in view of Goedeke (5,904,708). Claims 6-28 are further rejected under 35 U.S.C. §103(a) as being unpatentable over Causey, III et al. (USP 6,641,533). Claim 11 is rejected under 35 U.S.C. §103(a) as being unpatentable over Tune et al. (USP 5,630,710) in view of Goedeke (5,904,708) and further in view of Er (USP 6,185,461). Each of these rejections is respectfully traversed.

The above rejections are similar to the rejections raised in the previous Office Action dated September 22, 2004. Following the previous Office Action, a telephone interview was held with the Examiner (Mr. DeSanto) on December 17, 2004. During that telephone interview, it was the understanding of the undersigned attorney that an agreement was reached regarding the amendment of claim 12 to overcome the rejections of record. In particular, in the telephone discussion with the Examiner, the Examiner explained that the original version of claim 12 could be construed such that the option does not have to be disabled (due to the use of the term "or"). As a result, the Examiner applied no weight to the portion of claim 12 reciting that "when disabled the at least one patient programmable option is no longer displayed as an option."

Accordingly, during the telephone interview, it was agreed that an amendment to claim 12 (to recite that the "at least one of the patient programmable options may be enabled and disabled at different times ...") would require the phrase "when disabled the at least one patient programmable option is no longer displayed as an option" to be given effect and patentable weight in the claim. Therefore, a Response to the previous Office Action was filed in which claim 12 was amended, as proposed during the telephone interview.

It is respectfully submitted that claim 12 (and, thus, dependent claims 6-11 and 13-28) are patentably distinguished over the references cited in the above rejections, individually or in

combination. In contrast to the claimed invention, none of the prior art of record describes or suggests displaying options that may be enabled and disabled at different times and when disabled the option is no longer displayed. As described in more detail below, this feature and its benefits are neither disclosed nor suggested by the prior art of record. Based on the telephone interview discussed above, it was believed that the claim amendments made in response to the telephone interview would overcome the rejections then made of record.

However, in the Final Office Action, the Examiner has stated that Causey III et al. discloses a feature of “a CD device that enables and disables at least one patient programmable option at different times such that the option is no longer displayed” at col. 11, lines 28-48, col. 14, lines 8-37 and col. 21, lines 9-21. The cited sections of the Causey III et al. patent make general references to such functions as programming an external infusion device, receiving updates or instructions, setting parameters using keys and a display, setting date, time or alarms and accessing various modes, alarms or features. It is respectfully submitted that there is no description or suggestion in the cited sections of the Causey III et al. patent (or elsewhere in that patent) of a medical system that includes a communication device CD and a medical device MD, wherein the CD display is controlled to depict a plurality of patient programmable options and wherein at least one of the patient programmable options may be enabled and disabled at different times such that when disabled the at least one patient programmable option is no longer displayed as an option.

General references to displayable features or programmable features included in the cited sections of the Causey III et al. patent do not teach or suggest displaying a plurality of patient programmable options and wherein at least one of the patient programmable options may be enabled and disabled at different times such that when disabled the at least one patient programmable option is no longer displayed as an option. The cited sections of the Causey III et al. patent do not refer to disabling patient-programmable options or no longer displaying disabled options.

The Examiner also made the following argument:

“The examiner would like to draw the attention of the applicant to the fact that since a PDA interface is being used once the icons are disabled they are no longer displayed as options on the main menu screen. This is well known in the graphic interface art. A reference can be supplied if needed.”

However, the present claims are not directed to a PDA interface but, instead, are directed to a medical system that includes an ambulatory medical device (MD) and a communication device (CD), where the communication device has a display controlled to depict a plurality of patient programmable options and wherein at least one of the patient programmable options may be enabled and disabled at different times such that when disabled the at least one patient programmable option is no longer displayed as an option. Applicant is not aware of any ordinary PDAs or any PDA prior art devices that have such features.

The Examiner further argued that another interpretation of claim 12 could be that the on/off button would disable one of the patients options when the user shuts off the communication device, where that option would no longer be displayed (after shutting off the device). However, it is noted that claim 12 recites that the CD device is controlled to depict a plurality of options that can be enabled or disabled, where a disabled option is no longer displayed. The CD device could not be so controlled (it could not depict the plurality of options), if it is shut off. Accordingly, it is believed that claim 12 was distinguished over a prior art communication device that is shut off by a patient.

However, in an effort to expedite the allowance of the present application, claim 12 is amended herein to further clarify such distinctions. In particular, claim 12 is amended to recite that the CD display is controlled to depict a plurality of patient programmable options and at least one of the patient programmable options may be enabled and disabled at different times “such that when disabled the at least one patient programmable option is no longer displayed as an option while at least one enabled option is displayed.” Thus, as amended, claim 12 further clarifies that the disabled option is no longer displayed while at least one other option (enabled option) is displayed. The enabled option could not be displayed, if the device is shut off.

Accordingly, it is respectfully submitted that claim 12, as amended, is further distinguished from the device shut-off scenario mentioned by the Examiner.

More specifically, claim 12, as amended herein, is directed to a medical system that includes a communication device CD and a medical device MD, “wherein the CD display is controlled to depict a plurality of patient programmable options and wherein at least one of the patient programmable options may be enabled and disabled at different times such that when disabled the at least one patient programmable option is no longer displayed as an option while at least one enabled option is displayed.” None of the prior art of record appears to describe or suggest a medical device as claimed. None of the prior art of record describes or suggests displaying options that may be enabled and disabled at different times and when disabled the option is no longer displayed while at least one enabled option is displayed. This feature can provide significant advantages in that a healthcare provider (or a patient) may set a patient’s medical device by enabling or disabling options. Because disabled options will not be displayed, the patient will be less likely to be confused about available options and less likely to select an unintended or disabled option. By removing disabled options from the display, the display itself becomes more user-friendly. This feature and its benefits are neither disclosed nor suggested by the prior art of record.

In the Office Action, the Tune et al. patent was cited as describing a medical device in which “infusion parameters can be selected, and where the patient can program (28) there own options into the pump,” citing Column 3, lines 29-47 of the Tune et al. patent. (See Final Office Action, page 5, lines 1-3). However, the cited section of the Tune et al. patent does not describe or suggest a medical system which displays options that may be enabled and disabled at different times and where disabled options are no longer displayed. Instead, Tune states:

“A user interface is operatively associated with the processing circuit and includes a user display in the housing for displaying a plurality of parameters associated with the select delivery program. Each displayed parameter is either user changeable or not user changeable. An input for receiving user programmed commands to select and edit any of the parameters associated with the select delivery program is included within the housing. (Tune patent, Column 3, lines 39-47.)

Thus, Tune et al. describe a user interface that displays delivery parameters, some of which may be changeable (e.g., to change the delivery rate of a pump). In this manner a user of Tune et al.'s system may select and edit some of the delivery parameters shown on a display. However, selecting and editing delivery parameters does not teach or suggest a system in which a plurality of options may be depicted, an option is disabled and the disabled option is no longer displayed. Accordingly, it is respectfully submitted that claim 12 is patentably distinguished over the Tune et al. patent. While these distinctions over the Tune et al. system were pointed out in the Response to the previous Office Action, the Examiner has not addressed those distinctions.

Furthermore, none of the other prior art references of record appear to address the above-noted distinctions between claim 12 and the Tune et al. patent. The Goedeke patent was cited by the Examiner as disclosing RF telemetry and the Er patent was cited by the Examiner as disclosing the display of battery data in a graph. Those references do not address the above-noted distinctions between the claimed invention and Tune et al., individually or in any combination.

Accordingly, any combination of those references with Tune et al. would not lead to the invention as claimed. Furthermore, neither Causey III et al. nor Saltzstein et al. appear to address the above-noted distinctions and, thus also does not appear to describe or suggest the system as claimed. Accordingly, it is respectfully submitted that claim 12 (and dependent claims 6-11 and 13-28) is patentably distinguished over Tune et al., Goedeke, Er, Causey, III et al. or Saltzstein et al., alone or in combination.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-0872. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even

entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-0872.

Respectfully submitted,

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